

MICHAEL C. SERVERIAN (SBN 133203)
**RANKIN, LANDSNESS, LAHDE,
SERVERIAN & STOCK**
96 No. Third Street, Suite 500
San Jose, California 95112
Telephone : (408) 293-0463
Facsimile : (408) 293-9514

Attorneys for Defendant
CITY OF SANTA CLARA (also erroneously sued
as CITY OF SANTA CLARA POLICE
DEPARTMENT)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEAL G. BENSON,

Plaintiff,

vs.

SANTA CLARA MASONIC LODGE
#299, SANTA CLARA POLICE
DEPARTMENT AND CITY OF
SANTA CLARA, CA. MASONIC
GRAND LODGE SAN FRANCISCO,
CA. SCOTTISH RITE BODIES OF
SAN JOSE, CA,

Defendants.

Case No. C07 03476 HRL

**DEFENDANT CITY OF SANTA CLARA'S
NOTICE OF MOTION AND MOTION TO
DISMISS FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF CAN BE
GRANTED (FRCP 12(b)(6)), OR IN THE
ALTERNATIVE, MOTION FOR MORE
DEFINITIVE STATEMENT (FRCP 12(e));
POINTS AND AUTHORITIES**

Date: September 4, 2007

Time: 10:00 a.m.

Dept.: 2, 5th Floor

Judge: Hon. Howard R. Lloyd

TO PLAINTIFF, NEAL G. BENSON, IN PRO PER:

PLEASE TAKE NOTICE, that on September 4, 2007, at 10:00 a.m., or as soon
thereafter as the matter may be heard before the Honorable Judge Howard R. Lloyd, in
Courtroom 6 of the above-entitled Court, located at 280 South First Street, Fifth Floor, San
Jose, California, defendant CITY OF SANTA CLARA ("CITY"), will move the Court to
dismiss the action pursuant to FRCP 12(b)(6) with prejudice because plaintiff's newest
complaint fails to state a claim upon which relief can be granted, on the grounds that
plaintiff fails to allege any legal basis for redress or cause of action against defendant,

1 CITY OF SANTA CLARA.

2 In the alternative, defendant will request that plaintiff be compelled to furnish a more
3 definite statement, under FRCP 12(e), as to the following:

- 4 1) Whether plaintiff's claims state facts sufficient to constitute a cause of action
5 under 18 U.S.C. §1961, et seq.;
- 6 2) What causes of action are directed against the CITY OF SANTA CLARA;
- 7 3) Whether plaintiff's claim is barred by the statute of limitations; and
- 8 4) Whether the lawsuit can be brought against defendants who have statutory or
9 common law immunities.

10 This motion will be based on this Notice of Motion and Motion, the Memorandum of
11 Points and Authorities, Request for Judicial Notice filed herewith, and the pleadings and
12 papers filed herein.

13 Dated: July 24, 2007

RANKIN, LANDSNESS, LAHDE,
SERVERIAN & STOCK

14
15
16 By: /s/ Michael C. Serverian
17 MICHAEL C. SERVERIAN
18 Attorneys for Defendant CITY OF
19 SANTA CLARA
20
21
22
23
24
25
26
27
28

MICHAEL C. SERVERIAN (SBN 133203)
RANKIN, LANDSNESS, LAHDE,
SERVERIAN & STOCK
 96 No. Third Street, Suite 500
 San Jose, California 95112
 Telephone : (408) 293-0463
 Facsimile : (408) 293-9514

Attorneys for Defendant
 CITY OF SANTA CLARA (also erroneously
 sued as CITY OF SANTA CLARA POLICE
 DEPARTMENT)

IN THE UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

NEAL G. BENSON,

Plaintiff,

vs.

SANTA CLARA MASONIC LODGE
 #299, SANTA CLARA POLICE
 DEPARTMENT AND CITY OF
 SANTA CLARA, CA. MASONIC
 GRAND LODGE SAN FRANCISCO,
 CA. SCOTTISH RITE BODIES OF
 SAN JOSE, CA,

Defendants.

Case No. C07 03476 HRL

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF MOTION
 TO DISMISS FOR FAILURE TO STATE A
 CLAIM UPON WHICH RELIEF CAN BE
 GRANTED (FRCP 12(b)(6)), OR IN THE
 ALTERNATIVE, MOTION FOR MORE
 DEFINITIVE STATEMENT (FRCP 12(e));
 POINTS AND AUTHORITIES**

Date: September 4, 2007
Time: 10:00 a.m.
Dept.: 2, 5th Floor
Judge: Hon. Howard R. Lloyd

I. INTRODUCTION

This is the second lawsuit (at least) filed by Mr. Benson against Santa Clara Masonic Lodge #299, City of Santa Clara, City of Santa Clara Police Department and others. The original lawsuit, filed as case number C0-1300199, portions of which this Court is requested to take judicial notice of, was filed in January of 2003. After a series of FRCP Rule 12(b)(6) motions filed by all defendants in the case, Judge Whyte ordered plaintiff's complaint dismissed with prejudice on March 26, 2003. Thereafter, Mr. Benson continued to serve documents on the City and defense counsel, many of which were titled CODE NAME "KNEES". On April 20, 2007, Mr. Benson sought reconsideration of the court's

1 March 2003 Order dismissing his complaint. On June 22, 2007, Judge Whyte denied
 2 plaintiff's motion for reconsideration. On or about July 3, 2007, plaintiff filed another
 3 complaint apparently seeking the same relief against the same defendants although it is
 4 difficult to tell exactly.⁽¹⁾

5 The allegations in plaintiff's most recent complaint are unintelligible but seem to
 6 reference many of the same people and events that the original complaint and amended
 7 complaint in the previous action, C03-00119 did. In other words, these allegations have
 8 already been adjudicated by Judge Whyte and plaintiff cannot re-file his action at this
 9 time.

10 II. LAW AND ARGUMENT

11 Motions under FRCP 12(b) may be brought at any time before an answer or other
 12 responsive pleading is filed. FRCP 12(b); Aetna Life Ins. Co. v. Alla Medical Services, Inc.,
 13 855 F.2d 1470, 1474 (9th Cir. 1988)..

14 A. **DISMISSAL IS APPROPRIATE SINCE PLAINTIFF'S COMPLAINT FAILS TO 15 ALLEGE ANY LEGAL BASIS FOR LIABILITY AGAINST THE CITY OF SANTA CLARA.**

16 Dismissal is proper under Federal Rule of Civil Procedure 12(b)(6) where the plaintiff
 17 fails to state a claim upon which relief can be granted. A Rule 12(b)(6) motion tests the
 18 legal sufficiency of a claim. Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal
 19 is appropriate if "it appears beyond doubt that the plaintiff can prove no set of facts in
 20 support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41,
 21 45-46, 78 S.Ct. 99 (1957); Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 338 (9th Cir.1996).
 22 In deciding such a motion, all material allegations of the complaint are accepted as true,
 23 as well as all reasonable inferences to be drawn from them. Cahill, 80 F.3d at 338. If
 24 there is no cognizable legal theory or an absence of sufficient facts alleged to support a
 25 cognizable legal theory, the then motion should be granted. Balistreri v. Pacifica Police

26
 27 1. It bears note that defendant was served with a seven page complaint but no Code Name Knees
 28 Phase II diary was attached. See plaintiff's complaint at page 2, line 2. However, defense counsel
 respectfully requests that it not be served with this document as it has already been served with numerous
 documents in the Code Name Knees series.

1 Dept., 901 F.2d 696, 699 (9th Cir. 1988).

2 Plaintiff's complaint is utterly unintelligible. No discernable legal theory is pled
3 against any defendant in this matter.

4 **B. ASSUMING PLAINTIFF IS STILL TRYING TO ALLEGE RICO CLAIMS,**
5 **PLAINTIFF'S RICO CLAIMS AGAINST THE CITY OF SANTA CLARA**
6 **WOULD BE BARRED UNDER THE FOUR YEAR STATUTE OF**
7 **LIMITATIONS**

8 The allegations set forth in plaintiff's complaint, for the most part, pertain to events
9 occurring before March 28, 1993 when Mr. Benson visited the Santa Clara Police
10 Department seeking to file criminal charges against the Masonic Grand Lodge in San
11 Francisco and the Santa Clara Masonic Lodge. Chronologically, plaintiff's complaint then
12 leaps forward from March 1993 to the year 2006 when Mr. Benson allegedly learned that
13 a member of the Santa Clara Police Department was also a Masonic Lodge member in
14 the Santa Clara Lodge. The significance of this allegation is unknown nor explained by
15 Mr. Benson in his complaint. The significance of this new information is also not
16 explained nor tied into the events occurring prior to March of 1993.

17 Even with the four year statute of limitations governing RICO ⁽²⁾ actions, the plaintiff's
18 last allegation involving the City of Santa Clara was in March of 1993, over 14 years ago.

19 **C. RES JUDICATA PRINCIPLES APPLY TO THIS CASE GIVEN JUDGE**
20 **WHYTE'S PREVIOUS ORDERS AND RECENT ORDER DENYING**
21 **PLAINTIFF'S MOTION FOR RECONSIDERATION IN THE CO3-00119**
22 **ACTION**

23 Res judicata means that a litigant cannot file a lawsuit, lose on the merits, and file a
24 new lawsuit involving the same claims and parties.

25 Judge Whyte's dismissal of Benson's prior lawsuit in March of 2003 was an
26 adjudication on the merits. FRCP 41(b) states in pertinent part:

27 Unless the court in its order for dismissal otherwise specifies, a
28 dismissal ... other than a dismissal for lack of jurisdiction, for
improper venue, or for failure to join a party under Rule 19,

2. Judge Whyte aptly noted in his order dismissing plaintiff's complaint dated 3/25/03 that "Criminal charges, however, are brought and pursued by the government, not individual citizen litigants."

1 operates as an adjudication upon the merits.

2 Similarly, a dismissal for failure to state a claim under FRCP 12(b)(6) is a “judgment on
3 the merits” to which res judicata applies. See FRCP 41(b) and Federated Department
4 Stores, Inc. v. Moitie (1981) 452 U.S. 394, 399, 101 S.Ct. 2424, 2428, fn.3. Res judicata
5 applies when the earlier lawsuit reached a final judgment on the merits, involved the same
6 cause of action or claim, and involved identical parties or privies. Sidhu v. Flecto Co., 279
7 F.3d 896, 900 (9th Cir. 2002).

8 The first element is satisfied in this case because Judge Whyte’s dismissal of Case
9 No. C03-00119 was a dismissal with prejudice, and therefore, a determination on the
10 merits. Beard v. Sheet Metal Workers Union, Local #150, 908 F.2d 474, 477 N. 3 (9th
11 Circuit 1990). (“Federal law dictates that a dismissal with prejudice bars a later suit under
12 res judicata.”)

13 The second requirement is also satisfied because the new complaint references the
14 same claims and certainly references many of the same individuals (Henry Rosendin,
15 August “Joe” Collier, etc.) and the third element is satisfied because the new complaint
16 involves the same parties (Santa Clara Masonic Lodge #299, Santa Clara Police
17 Department and City of Santa Clara) as the old complaint.

18 **D. IN THE ALTERNATIVE, PLAINTIFF SHOULD BE COMPELLED TO**
19 **PROVIDE A MORE DEFINITE STATEMENT AS TO DEFENDANT'S, CITY**
OF SANTA CLARA, CONDUCT.

20 FRCP 8(e)(1) requires that “each averment of a pleading shall be simple, concise,
21 and direct.” FRCP 12(e) provides, “If a pleading to which a responsive pleading is
22 permitted is so vague or ambiguous that a party cannot reasonably be required to frame a
23 responsive pleading, the party may move for a more definite statement before interposing
24 a responsive pleading.” The proper test in evaluating a motion under Rule 12(e) is
25 whether the complaint provides the defendant with a sufficient basis to frame his
26 responsive pleadings.” Federal Sav. and Loan Ins. Corp. v. Musacchio, 695 F.Supp. 1053,
27 1060 (N.D.Cal.1988). “Whether or not the motion should be granted or denied depends
28 primarily on the facts of each individual case, and it is ultimately within the Court's

1 discretion to determine whether the information sought by the movant is necessary to
2 enable him to prepare a responsive pleading” Kuenzell v. U.S., 20 F.R.D. 96, 98 (N.D.Cal.
3 1957).

4 Like its predecessor, plaintiff’s newest complaint is incomprehensible. Thus, in the
5 event that defendant’s motion to dismiss under FRCP 12(b)(6) fails, defendant requests
6 that the court order plaintiff to amend his complaint. .

7 **CONCLUSION**

8 This is nothing more than old wine in a new bottle. Plaintiff has had opportunities to
9 properly plead his claims against defendants in this matter. When after a filing hiatus
10 plaintiff moved for reconsideration of his prior lawsuit which was denied by the court, he
11 simply filed a new and equally unintelligible complaint. Defendant requests that this court
12 sustain this motion to dismiss without leave to amend.

13
14 Dated: July 24, 2007

RANKIN, LANDSNESS, LAHDE,
SERVERIAN & STOCK

15
16
17 By: /s/ Michael C. Serverian
18 MICHAEL C. SERVERIAN
19 Attorneys for Defendants
20 CITY OF SANTA CLARA
21
22
23
24
25
26
27
28